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IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

DATATREASURY CORPORATION	§	
	§	
Plaintiff	§	
	§	
v.	§	**Civil Action No. 2:06-CV72DF**
	§	
WELLS FARGO & COMPANY, ET AL.	§	
	§	
Defendants	§	

DEFENDANT HSBC NORTH AMERICA HOLDINGS INC.'S AND HSBC BANK USA, N.A.'S MOTION FOR PROECTIVE ORDER AND FOR EXTENSION OF TIME

1. HSBC North America Holdings Inc. ("HNAH") and HSBC Bank USA, N.A. ("HBUS") hereby move, pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, for a protective order with regard to documents produced in redacted form to DataTreasury pursuant to this Court's March 15, 2007, Order relating to jurisdictional discovery.

PRELIMINARY STATEMENT

2. In its March 15, 2007, Order, the Court denied the majority of DataTreasury's motion to compel, and correctly noted that "the burden or expense of the majority of DataTreasury's proposed discovery outweighs the likely benefits of the discovery." As to the portion of DataTreasury's motion which was granted, the Court stated,

> …based on DataTreasury's specific argument that the defendants' corporate representatives revealed that the Boards of Directors of the pertinent parent companies and subsidiaries are overlapping, meet jointly and have joint committees and shared officers, the Court will allow limited discovery into the minutes and other documents related to the meetings of the Boards of Directors of the pertinent parent companies and subsidiaries.

(Order, Exhibit A hereto, at p. 8, emphasis added.)

3. Seeking to comply with the Court's March 15, 2007, Order, HNAH and HBUS have produced to DataTreasury copies of minutes and other documents related to all meetings of the Board of Directors of HNAH and HBUS, its banking subsidiary and co-defendant in this lawsuit, as well as those banking subsidiaries in the direct line between HNAH and HBUS.[1] However, HNAH has redacted from those minutes and other documents information which has no relationship to the issues identified as potentially relevant by the Court in the March 15, 2007 Order. This irrelevant information is also extremely sensitive and confidential, and is entitled to protection because it contains information that HNAH and HBUS are prohibited from disclosing pursuant to various federal banking laws and it includes information that contains trade secrets or other confidential research, development, or commercial information.

4. HNAH is also seeking leave to tender to the Court *in camera* unredacted copies of those documents and moves to protect the redacted portions from discovery.[2] Additionally, for purposes of efficiency and to lessen this Court's burden, HNAH has attached a summary of the HNAH and HBUS productions, attached hereto as Exhibit A and B, respectively. The summaries list broad categories and provide a general description of the type of information contained therein with an explanation as to why certain material has been redacted.

ARGUMENT

5. Federal Rule of Civil Procedure 26(c) vests in the Court the power, "for good cause shown," to make "any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including . . . that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a designated way." Fed.R.Civ.P. 26(c)(7); *see Harris v. Amoco Prod. Co.*, 768 F.2d 669,

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[1] The production covers the period beginning from January 1, 2004, when HNAH came into existence.

684 (5th Cir. 1985). A person seeking a protective order should "establish that the information sought is a trade secret or other proprietary information and then demonstrate that its disclosure might be harmful. The burden then shifts to the party seeking discovery to establish that the disclosure is relevant and necessary to the action." *Finlan v. City of Dallas*, 888 F. Supp. 779, 792 (N.D. Tex. 1995). In making such a determination, a court is to balance the potential harm resulting from release of the confidential information against the need by the party seeking the disclosure to have the confidential information. *See id.*

6. HNAH is regulated by the Board of Governors of the Federal Reserve Board, and thus, is prohibited from disclosing confidential supervisory information, including reports of examination or any portion of such reports. See 12 C.F.R. §§162.2(c)(1), 261.20(g), and 261.22(e).[3] The minutes contain such confidential supervisory information, and HNAH and HBUS are prohibited from disclosing information related thereto. See the Summaries attached hereto as Exhibit A and B.

7. Further, there are numerous minutes that relate to HBUS, which, as a national bank, is regulated by the Office of Comptroller of the Currency ("OCC"). The OCC monitors national bank compliance with the Bank Secrecy Act and 31 C.F.R. § 103. Disclosure by HNAH

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[2] The highlighted information in the Court's copy of the Discovery represents the material produced to DataTreasury. The non-highlighted portion represents the information redacted from the Discovery provided to DataTreasury.

[3] Title 12, section 261.20(g) of the C.F.R. provides:

> All confidential supervisory information or other information made available under this section [to supervised financial institutions and financial institution supervisory agencies] shall remain the property of the Board. No supervised financial institution, financial institution supervisory agency, person, or any other party to whom the information is made available, or any other officer, director, employee or agent thereof, may disclose such information without the prior written permission of the Board's General Counsel except in published statistical material that does not disclose, either directly or when used in conjunction with publicly available information, the affairs of any individual, corporation, or other entity. No person obtaining access to confidential supervisory information pursuant to this section may make a personal copy of any such information; and no person may remove confidential supervisory information from the premises of the institution or agency in possession of such information except as permitted by specific language in this regulation or by the Board.

(or HBUS) of certain information pertaining to HBUS that is deemed "non-public OCC information," such as reports of examination, is prohibited by 12 C.F.R. §§4.32(b)(2), 4.36(d),[4]

8. A protective order should issue in this case because the information that HNAH has redacted is completely irrelevant to the limited jurisdictional discovery as set out in the Court's March 15, 2007 Order. It is significant to note that having overlapping or joint Boards of Directors is insufficient to establish alter ego or personal jurisdiction. *See Invacare Corp. v. Sunrise Med. Holdings, Inc.*, 74 U.S.P.Q2d (BNA) 1906 (D. Ohio 2004) ("Although admittedly the officers and directors of these two entities overlap, this factor alone is insufficient to warrant a finding that Sunrise Medical is Sunrise Holding's alter ego."). It is even more significant that DataTreasury failed to plead the requisite "alter ago." Thus, any request for minutes and other documents premised on overlapping Boards is entirely irrelevant and unfounded based upon DataTreasury's own pleadings.

9. HNAH has redacted irrelevant information that, on its face, is exceedingly sensitive and confidential, including information that is entitled to protection because of privilege, trade secret, confidential research, development or commercial information. Fed.R.Civ.P. 26(c)(7). Allowing disclosure of such sensitive and confidential matters would severely harm HNAH and HBUS's competitive business position and undermine the ability of the Boards from conducting business in an open and candid manner.

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[4] Section 4.36(d) prohibits the unauthorized disclosure of non-public OCC information:

> All non-public OCC information remains the property of the OCC. No supervised entity, government agency, person, or other party to whom the information is made available, or any officer, director, employee, or agent thereof, may disclose non-public OCC information without the prior written permission of the OCC, except in published statistical material that does not disclose, either directly or when used in conjunction with other publicly available information, the affairs of any individual, corporation, or other entity. Except as authorized by the OCC, no person obtaining access to non-public OCC information under this section may make a copy of the information and no person may remove non-public OCC information from the premises of the institution, agency, or other party in authorized possession of the information.

10. For example, the HNAH Minutes contain reports by the General Counsel regarding changes to certain laws, and inquiries or presentations by regulating bodies. As the Court can determine by reviewing the *in camera* materials, such information is highly sensitive and should be protected from discovery pursuant to Fed. R. Civ. P. 26(c)(7) as well as the attorney client and work product privileges. Also evident from the documents themselves, the HNAH Minutes contain confidential and proprietary information regarding strategic planning, development and potential acquisitions that is irrelevant to the limited jurisdictional issue and which should not be disclosed outside of HNAH and its affiliates.

11. Similarly, the HBUS Minutes contain discussions of complex related-party financial transactions involving funds exchanged between HBUS and its affiliates. As the Court can determine by reviewing the *in camera* materials, disclosure of this information is irrelevant to HNAH's jurisdictional motion and it would reveal confidential information which would provide others in the industry with considerable insight into how HBUS and its affiliates structure themselves and their related-party transactions. Likewise, the Minutes contain discussions of inquiries by regulatory bodies. HBUS's Minutes also discuss specific operating results for various units and business strategies and programs for those units going forward. Disclosure of such Minutes would reveal private, confidential and proprietary information which would not be relevant to this lawsuit and which could harm HBUS's competitive business position.

12. In such circumstances, a protective order is appropriate. *See Harris v. Amoco Prod. Co.*, 768 F.2d 669 (5th Cir. 1985), cert. denied, *Amoco Prod. Co. v. E.E.O.C.*, 475 U.S. 1011, 106 S.Ct. 1186, 89 L. Ed. 2d 302 (1986) (finding good cause for protective order limiting disclosure of documents containing confidential information); *Holland v. Summit Autonomous, Inc.*, 2001 WL 930879 at *3 (E.D. La. Aug. 14, 2001) (finding good cause for protective order

because of potential harm from public disclosure of "commercially sensitive or proprietary information.") The trial court has broad discretion to determine whether a protective order is warranted, and the specific restrictions that should be imposed. *See Aluminum Co. of America v. United States Dep't of Justice, Antitrust Div.*, 444 F. Supp. 1342, 1346 (D.D.C. 1978).

13. As this Court noted in its March 15, 2007 Order, *limited* discovery would be allowed on the narrow issue of joint activities of the separate boards. HNAH's redacted production satisfies this requirement of limited discovery on this limited issue. Going beyond the limited discovery contemplated by the Order would require HNAH to reveal extremely confidential business information which has no relevance to the issue identified by the Court. While the Court has entered a Confidentiality Order to protect certain information, the redacted information is of such a sensitive nature and of such irrelevance that HNAH is entitled to protect it from discovery altogether.

SUPPLEMENTATION

14. HNAH has produced the redacted documents to Plaintiff pursuant to the March 15, 2007, Order. However, given the time constraints of the order and the need for detailed examination of the documents, HNAH requests leave of Court to file additional briefing and evidence in support of this Motion.

CONCLUSION

15. For the reasons set forth above, HSBC North America Holdings Inc. respectfully requests that the Court grant this protective order and allow HNAH to produce readacted documents to DataTreasury and allow the unredacted documents to remain under protection and to not be produced.

Dated:

Respectfully submitted,

BOUDREAUX, LEONARD, HAMMOND & CURCIO, P.C.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was served on the __13th__ day of ____April____, 2007 via electronic transmission.

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/s/
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CERTIFICATE OF CONFERENCE

Pursuant to Local Rule CV-7 (h) for the United States District Court for the Eastern District of Texas, I certified that I conferred with opposing counsel by email on April 12, 2007, with regard to the foregoing Motion for Protection and that opposing counsel opposes this Motion.

/s/
David S. Curcio